



Annual Report

July 2000 to June 2001

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ALBERTA LAW REFORM INSTITUTE

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The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH

To conduct and direct research into law and the administration of justice.

RECOMMEND

To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE

To promote law research and reform.

COOPERATE

For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.



Board:

Mr. Justice B.R. Burrows (to January 2001)
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Professor R.J. Wood (to May 2001)

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Richard H. Bowes (to September 2000)
Debra W. Hathaway (from January 2001)
Janice Henderson-Lypkie
William H. Hurlburt, Q.C.
Cynthia L. Martens (from February 2001)
Margaret A. Shone

Administrator:

Carol Fowlie

Support Staff:

Marlene Welton
Ilze Hobin (from September 2001)
Jenny Koziar

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The Alberta Law Reform Institute is approaching the end of its 34th year of operation. Its longevity is a tribute to the confidence and support of its founders and the dedication and vision of its Board.

We are housed and supported at the University of Alberta, and we record with thanks how important is this ongoing help. The financial support and the provision of premises has provided a solid and reliable base from which to operate.

The Department of Justice continues to support our work, and to incorporate the Institute both in its policy development and in its legislative calendar. The Minister, The Honourable Mr. Dave Hancock, Q.C., has been open and supportive, and we acknowledge the benefit of such a cordial relationship. We had developed a very reliable working relationship with the Deputy Minister, Mr. Paul Bourque, Q.C., which was marked by a frank and constructive exchange of information and plans. We were sorry to see Mr. Bourque depart, but wish him well in his new responsibilities as Senior Vice-President of Member Regulation at the Investment Dealers Association of Canada. We look forward to working closely with the new Deputy Minister, Mr. Terrence J. Matchett, Q.C.

The lines of communication with the Department are well tended by Mr. Clark Dalton, Board Member and Director of the Legal Research and Analysis Division, and by the Chief Legislative Counsel, Mr. Peter Pagano, Q.C. All the participants are well aware of, and appropriately respect, the roles of government and an independent law reform agency.

Few law reform agencies have the luxury of the working relationship we enjoy with the Law Society of Alberta. Through successive presidencies, most recently Mr. Alan Macleod, Q.C., and Mr. Eric Macklin, Q.C., the Institute has been fully and productively engaged in the views and interests of the profession. Mr. Peter Freeman, Q.C., was tireless in his ability to provide information to the Institute and to make the connections between the Institute and members of the

profession who could complement or assist our work. We were sorry to see Mr. Freeman retire from the position of Secretary at the end of June and add our hearty congratulations on a job well done and our best wishes in his "reduced activity" retirement. There is a consolation, the fact that his successor, Mr. Don Thompson, has already demonstrated the continuation of our working relationship and we look forward to as profitable an environment as we have previously enjoyed.

Our link to the Bar is also effectively cultivated through the Alberta Branch of the Canadian Bar Association. We are able to report to and through the Council, and the sections are a very valuable source of ideas, feedback and suggestions. We acknowledge the work of the Presidents, Sean Dunnigan, Q.C. and Lucille Birkett, and the Executive Director, Terry Evenson, in ensuring that the lines of communication are left open and operative.

While some agencies have worried about sheer survival, ours has been more the challenge of ensuring adequate resources to do the task. We have been fortunate that the Department of Justice has continued its funding through some rather stressful times. The Alberta Law Foundation has been our backstop, often exceeding the normal 60/40 funding ratio. The Chairman, Mr. Anthony Friend, Q.C., and the Executive Director, Mr. Owen Snider, provide a blend of encouragement and critical review that is constructive, supportive, and respectful. Our reporting to the Foundation Board represents a very important critical review of our fiscal management and planning, and we acknowledge both the spirit and helpfulness of that review.

We are almost at the end of our self-imposed process review, a task that requires stamina, patience, and a willingness to be self-critical. The Board has provided significant guidance in this process, and the Chairman, members of the Management Committee, and the Review Committee have devoted considerable time to the task. To our Board who have added these tasks to their already significant project load, we owe a debt of gratitude.

The heart of the Institute's work, its research and publications, relies primarily on the work of our Counsel. We continue to receive work of the highest

quality which, in turn, complements the work of our Board. Our recent Counsel appointments have fitted in well and their work has been very well received by the Board.

Particularly, I want to acknowledge the work of our support staff who make things happen on a day-in and day-out basis: our Administrator, Carol Fowlie, to whom the Human Resources, Finance and Supervisory responsibilities fall; Jenny Koziar who handles the logistics and materials of the Board meetings, in between managing the Director's activities; Marlene Welton who handles our library and produces the final products of all our written reports; and more recently Ilze Hobin who looks after project records, archives, and telephone systems. We acknowledge with gratitude the performance of all those tasks which is so easy to take for granted, but without which the Institute would simply not run.

Finally, a collective and necessarily anonymous thank you to all those who have assisted in the various projects. We mention all of these individuals in the specific reports, but it is appropriate to acknowledge our collective gratitude at this time.

While the Alberta Law Reform Institute has now been in existence for 34 years, that in itself is no indicator of success. The measure of success, and we must constantly remind ourselves of this, is whether we have improved the law and the administration of justice for all Albertans.



Organizational Review

In 1998 the Institute commenced an organizational review of how it selects its projects and then manages the projects to which it dedicates its resources. Initially, the goal was to open up and explain the process of project selection, so as to encourage more involvement by the public and the profession. Secondly, the goal was to bring greater structure and predictability to the management of the projects which the Institute takes on. Critical review and analysis of these questions necessarily creates some discomfort if done comprehensively and forcefully. However, the product is a thorough understanding of the factors which influence the Institute's activities, and an ability to deal with those factors once they are identified. The Institute has now produced a comprehensive Research Management Guide to assist it in guiding projects through a consistent process, and to manage the various demands which are placed on projects as they move from concept to project delivery. Understanding the dynamics of project management also allows each individual to understand their role and contribution to the successful delivery of the project. We first tested the proposed structure in our project on Class Actions, which we used as a pilot project. Based on what we learned in that area, we are now applying the process to our most recent topic, that of Future Income Plans. Reaction so far is that the structure and plan is extremely well received.

Staff Replenishment

We are now almost up to full complement of counsel resources. Debra Hathaway joined the staff as of January 1 of this year. Debra was formerly with the Manitoba Law Reform Commission for a number of years, and most recently worked on contract with the Legislative Counsel office in the preparation of the Revised Statutes of Alberta. We are fortunate to have both Debra's experience and her legislative drafting background. Cynthia Martens joined the Institute on February 1 of this year, after previously working in private practice and as a legal research officer with the Court of Queen's Bench. We instituted a new and hopefully very profitable relationship by having Cynthia based partially in Calgary at the University of Calgary, and we acknowledge with gratitude the resources that the

Faculty of Law at the University of Calgary has dedicated to allow Cynthia to be based there half-time. We hope that this will provide us with a stronger presence in Calgary, and encourage greater interaction between the Institute and the Southern Alberta Bar.

Janice Henderson-Lypkie returned to full-time practice December 1 of the year 2000, but we were fortunate to be able to retain her services on contract from January 1 onwards to work on a number of projects with which she had formerly been involved. Suzanne Condlin will join the Institute in mid-September, working as a .6 fte. Suzanne previously worked as Senior Editor for CCH Canadian for their succession and health law publications, and most recently had been a Research Fellow and Publications Manager for the Australian Key Centre for Ethics, Law, Justice, and Governance during a three-year residence in Australia. Sandra Petersson will join the Institute full-time on December 1, 2001, when she arrives from her current post as a Senior lecturer at the University of Wellington in New Zealand. Sandra previously was the Legal Research Officer attached to the Chief Justice of the Court of Appeal of Alberta.

Professor June Ross was seconded from the Faculty effective July 1, 2001 to be the Lead Counsel on the Rules of Court Project. Professor Ross is also a Director of the Canadian Forum on Civil Justice and has considerable experience as a teacher in the civil procedure area.

Professor Dick Dunlop was retained on a project basis to work on the feasibility stage of the project on the Exigibility of Future Income Plans. Professor Dunlop will continue with that project if it is approved by the Board as an ongoing project.

We have not yet filled the position of secondee from the Department of Justice, and discussions will recommence to determine the subject area in which that effort should take place.

Board Membership

We have had some changes in Board membership during the year. Justice Burrows resigned effective January of 2001, and Professor Wood relinquished his position as the faculty appointee when he was appointed as a commissioner to the Law Commission of Canada. Mr. Doug Stollery, Q.C. has agreed to serve as a member of the Board effective September 2001, and we are currently discussing with the Dean of the Faculty who should be appointed as the Faculty representative on our Board.

Challenges

As always, there are a number of issues that must be dealt with on a priority basis, the successful handling of which is crucial to the ongoing effectiveness of the Institute.

1. *Budget Issues.* This year represents the first year in some time that the Institute has been able to put forward and operate under a balanced budget. The financial constraints of the last few years have also had an impact on the salaries of legal counsel, and it now becomes necessary to revise that salary structure to ensure that it is not out of line with the remuneration of crown counsel, academic appointments, and those groups which are an appropriate comparison for Institute Counsel. The Management Committee has reviewed the data and will be proposing to the Board a revised structure very shortly.
2. *Publication and Consultation.* One of our biggest challenges is how to incorporate communication technology into our publication and consultation processes. We are now about to enter the third generation of our website, and we are examining how we can move more quickly to web based publication and interactive consultation. This will be particularly important as we integrate the task into our Rules of Court project.
3. *Space Pressures.* Space remains an issue for the Institute, and we face pressure of space, along with the Faculty in whose building we are housed. We are now at the limit of our space, with no prospect for any expansion.

Some small renovations may assist in making the space more efficient and costs will have to be faced in maintaining the premises after a few years when renovation and maintenance costs had to be cut back.

4. *Financial Reporting.* We have undergone major changes in the software systems which we use for personnel and financial reporting. Along with the University of Alberta we have endured, and hopefully overcome, the transition to PeopleSoft software. As a result of these changes, we have also simplified and rationalized our accounts holding, in a way which we hope will present our financial picture more clearly. This should also assist with the very significant amount of reporting we do to founding bodies and other agencies which are both interested in the work of the Institute, and an integral part of how we do our work. Reducing, or at least integrating, the impact of this reporting requirement will free up time for the important and priority work of legal research.
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Summer Students

Each summer we retain several students to assist with project research. This gives the students some experience in the type of research and writing we do, and assists counsel with some of the overall workload. Our students are of consistently high calibre and make a real contribution to our activities.

Summer 2000

Bonnie Bokenfohr
Jon Stolee

Summer 2001

Alicia Backman-Beharry
Paulette DeKolver
Jeremiah Kowalchuk



Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.
- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.
- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.
- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

Methodology

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

The methodology of the program is described on charts "**Should We Adopt a Project?**" – from idea to approved Project and "**Approved Project**" from Project to Final Report. (See pages 11 and 12.)

Should We Adopt a Project?

1. Initial Assessment

- Discard
- Describe
- Priorize
- Assign
- Criteria

2. Develop Case Plan

- Preliminary Review
- Define Scope
- Identify Issues
- List Contacts
- Brainstorm Idea
- Consider Methods

3. Consult Community

- Identify "community"
- Create Materials
- Set Response Times
- Consider Interest Level

4. Review & Report

- Collect, summarize responses
- Analyze
- Assess Pros and Cons
- Decide
 - Go (onto Bus. Case Plan)
 - No Go
 - Return to Consultation
- Document Reasons

5. Develop Case Plan

- Establish Plan
- Identify Timelines
- Describe Expectations
- Estimate Completion Date
- Consider Resources

6. Present Findings (Go/No Go)

- Present Findings to the Board
- Board Decision
 - Go or No Go
 - Approval of Business Plan

Approved Project

Project Mgmt. Committee

- Director
- Board Members
- Lead Counsel
- Co-Counsel

Counsel

Project Consultation Committee

- Board Member(s)
- Counsel
- Director
- Subject Matter Experts
- Affected Parties

*Memos
& Papers*

Research

*Draft of
Document*

Issues

*Document
Questionnaire*

Consultation

*Board
Material*

Policy

*Format
& Style*

Draft Document

*Publication &
Distribution*

Final Report

*Alberta
Law
Reform
Institute*

Board

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our reports on Corporate Directors' Liability and Dispute Resolution processes were intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the Recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of Alberta. Our reports on Arbitration and on Limitations are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:

Research Paper
Shared Data and Research
Early Release

Issues Paper
Develops Policy Issues
Outlines Possible Solutions
Seeks Comment and Consultation

Consultative Document
Focussed Policy Issues
Identified and Discrete Audience
Seeks Comment Prior to Final Proposals

Report on Proceedings
Issues and Background
Proposed Solutions
Seeks Comment before Proceeding

Final Report
Considered Position
Draft Legislation
Submission for Action



During this year ALRI issued one Final Report. The Executive Summary is set out below.

Final Report No. 85

Class Actions

A. Recommendations for Class Actions Reform

In this report we make recommendations to reform the existing procedure for handling a "class action" (or "representative action" as the historic procedure is called now, under rule 42 of the Alberta Rules of Court). We recommend that Alberta enact a modern class actions statute based on the Canadian model that has been enacted in Quebec, Ontario and British Columbia. Our recommendations are based on the prototype of this model contained in the *Uniform Class Proceedings Act* adopted by the Uniform Law Conference of Canada in 1996.

If adopted, our primary recommendations would add a procedure to the existing procedural framework for handling litigation involving multiple plaintiffs having the same or similar claims against the same defendant (plaintiff class action). Our ancillary recommendations would add a procedure for handling litigation involving multiple defendants who are in the same or a similar position in relation to claims brought against them (defendant class action).

What do we mean by a "modern class actions statute"? In an ordinary action, each litigant is a party in their own right. In an historic representative plaintiff class action (in Alberta, rule 42), one party commences an action on behalf of other persons who have the same claim to a remedy against a defendant for a perceived wrong. That party conducts the action as "representative plaintiff." Only the "representative plaintiff" is a formal party to the proceeding. Other persons having claims that share questions of law and fact in common with those

of the representative plaintiff are members of the "class." Once the class has been determined, the class members are bound by the outcome of the litigation even though they generally do not participate in the proceedings.

Modern class actions statutes elaborate and improve upon the "representative action" procedure. Like the historic action, in a modern class action a representative plaintiff conducts the proceeding on behalf of other persons. However, a class member's claim need only be similar to the representative plaintiff's claim; it need not be exactly the same. Here again, all members of the class are bound by the outcome on the common issues. However, provision is made for the formation of subclasses and the separate resolution of issues relating to individual class members in addition to the resolution of issues common to the main class or a subclass. A number of statutory safeguards and an expanded role for the court help to ensure that the interests of the class members are protected. For example, a court must approve ("certify") a proceeding as a class proceeding before it can go forward, approve notices to class members, approve a settlement or discontinuance of the action and approve an agreement between the representative plaintiff and class counsel for the payment of lawyer fees and disbursements.

B. Background to Recommendations

1. Underlying policy

The phenomenon of many individuals having the same or similar claims against one or more defendants is a modern reality. If dealt with on an individual basis, this litigation can be costly, complex and cumbersome. As they have in other jurisdictions, lawsuits involving large numbers of claimants are being brought in a wide variety of cases. Recent Alberta examples include the much-publicized wrongful sterilization litigation, the residential school litigation and the pine shakes litigation. Examples elsewhere include cases involving defective consumer or industrial products, misrepresentation of products or services, securities breaches, mass disasters and creeping disasters (such as injury to health over a prolonged time period or environmental damage), to name but a few. Courts in Alberta face the challenges of the growing complexities of litigation.

Our recommendations are founded on an acceptance of the view that the basic social policy underlying the civil justice system is to provide legal remedies for legal wrongs. In most situations, this involves compensating persons who have been wronged by others with an award of money damages. The legal wrong giving rise to the remedy may stem from a breach of contract, tort or other legal cause. Awarding compensation may also have a deterrent effect on future conduct.

In developing our recommendations, we have been mindful that the goal is to help ensure that Alberta's civil justice system operates in a manner that is fair, certain and efficient for proceedings in which a number of plaintiffs have the same or similar claims against the same defendant or defendants. Plaintiffs should be able to bring deserving claims, defendants should be protected from unreasonable claims, and the civil justice process should be certain and efficient. The assessment of the existing law and examination of reform options is based on a consideration of these principles. Our recommendations are directed at procedural reform. We do not recommend the creation of new substantive rights and liabilities unrelated to the procedural issues.

2. Shortcomings of existing procedures – is reform needed?

Before forming our recommendations, we reached the conclusion that it is both possible and desirable to improve upon the existing procedural tools. The courts have interpreted rule 42 (and its equivalents in other jurisdictions) so restrictively that many cases involving persons having similar claims cannot be brought within its strictures. Its shortcomings to meet the exigencies of modern litigation have been the subject of comment by the Supreme Court of Canada (in *Naken v. General Motors of Canada*) and the Alberta Court of Appeal (in *Western Canadian Shopping Centres v. Dutton*). The Alberta Court of Appeal expressed its opinion that “this area of the law is clearly in want of legislative reform to provide a more uniform and efficient way to deal with class action law suits.”

3. Reform in other jurisdictions

Within Canada, three jurisdictions – Quebec, Ontario and British Columbia – have enacted modern class actions statutes. The Uniform Law Conference of Canada and the Manitoba Law Reform Commission have recommended the enactment of

modern class actions statutes and the Rules Committee of the Federal Court has recommended the adoption of similar provisions in rules of court. Elsewhere in the Commonwealth, Australia has enacted modern class actions legislation and law reform commissions in Scotland and South Africa have recommended its enactment.

4. Broad consultation and divergent opinion

We consulted widely on the question of the need to reform the procedures currently available to handle litigation involving multiple plaintiffs having similar claims. Various methods of consultation were employed. They included:

- establishing an advisory committee of a cross-section of lawyers – corporate and government counsel and lawyers in private practice with experience acting for plaintiffs and defendants;
- inviting comment on the issues raised in Consultation Memorandum No. 9 on *Class Actions* (CM9) – publicizing its availability through the Law Society of Alberta and Canadian Bar Association, distributing hard copies and posting it on our website for downloading;
- interviewing persons with relevant knowledge; and
- holding an invitational consultation session to compare the relative strengths of the existing judicial case management approach with the approach taken in modern class actions statutes.

Alberta lawyers registered strong support for the introduction of modern class actions provisions. Although the support is widespread, that support is not unanimous. Persistent themes of controversy sparked a lively debate about the social purposes of class actions. Some respondents voiced reservations about the direction in which the expansion of class actions is taking us as a society. Among other matters, they were concerned about the cost to society overall of a law that, in their view, encourages needless litigation (large costs to defendants for small returns to individual class members). Some of the persons who expressed reservations thought that, used creatively, the existing law can provide what is needed. Others saw value in reforming the existing law in order to clarify the procedures and make them more relevant to modern situations. Even among those supporting reform, views differed as to the form the changes should take. The

disparate ideological underpinnings of the divergent views make the differences difficult to resolve. We have listened carefully to the views of those who voiced reservations about class actions reform and tried to respond reasonably to those views in our recommendations.

In summary, we have found that there is general support for class actions reform in Alberta. We are not persuaded that the concerns expressed by persons who question the need for reform tip the balance against reform, although we remained alert to these concerns in framing our detailed recommendations for reform. Our position is that reform is needed and we recommend that reform take place.

5. Choices considered

We concluded that reform is needed, but how should this reform be achieved? We considered three options: (1) to further develop Alberta's emerging judicial case management model; (2) to otherwise amend the Alberta Rules of Court; or (3) to introduce a modern class actions regime. We give an account of the advantages and disadvantages we see in each option in chapter 3 of our report, before recommending the third option.

C. Details of Recommendations

Our report contains detailed recommendations for class actions reform. Legislation embodying these recommendations would include:

- criteria that must be met to establish a class action;
- a certification procedure to determine that it is appropriate for an action to proceed as a class action;
- conduct of the proceeding by a representative plaintiff whose suitability is determined by the court;
- court-approved notice to class members (or potential class members) that a class action has been certified;
- an opportunity for resident class members to opt out of the class proceeding and for non-resident class members to opt in;

- provision for the formation of subclasses, each with its own representative plaintiff, where some members of the main class share issues that are not common to other members of the main class;
- active judicial case management of the proceeding;
- notice to class members that the common issues in the class action have been resolved, whether by settlement or judicial disposition;
- provision for the determination of individual issues separate from the common issues;
- aggregate or individual assessment of damages;
- various provisions designed to ensure the protection of the interests of class members, such as:
 - court approval of a settlement or discontinuance of the action,
 - court approval of an agreement for the payment of fees and disbursements entered into between the representative plaintiff and class counsel, and
 - judicial discretion to allow class members to participate in the proceeding;
- provisions regarding the suspension of limitation periods; and
- binding effect of the outcome of the action on class members.

We also make recommendations for defendant class actions. These recommendations are based on the plaintiff class action provisions, but with certain modifications to take into account differences in the position of plaintiffs and defendants in litigation.

D. Conclusion

Our conclusion is that reform is needed. Litigation involving multiple claims by persons who are similarly-situated is a reality of today's society in Alberta and elsewhere. Alberta's existing procedures available for dealing with these claims have significant shortcomings. They can and should be improved. Other Canadian jurisdictions have met shortcomings of a like nature by enacting class actions legislation. In our opinion, the Canadian legislative model of class actions reform is a good model. Therefore, we recommend that Alberta enact a modern class

actions statute based on this model, but modified in accordance with the recommendations contained in our report.



Class Actions and National Classes

We published our Final Report No. 85 on *Class Actions* in December 2000. In it we recommended that Alberta enact a modern class actions statute based on the Canadian model that has been enacted in Quebec, Ontario and British Columbia. Our recommendations are based on the prototype of this model contained in the *Uniform Class Proceedings Act* adopted by the Uniform Law Conference of Canada in 1996. They are intended to:

- (1) improve access to justice for persons whose actions have merit but might not otherwise be asserted because of litigation costs;
- (2) contribute to judicial economy by better containing costs to litigants and the court system and otherwise expediting judicial proceedings;
- (3) in providing greater access to justice, help deter wrongful conduct by making sanctions available.

Alberta Justice now has our report in hand. A legislative counsel has been assigned to prepare draft legislation working from the recommendations in our report and a tentative draft which we provided. At this date, we await word from the government about how it plans to respond to our recommendations and when we might expect the introduction of a Bill in the Legislature.

On July 13, 2001, the Supreme Court of Canada issued its judgment in the Alberta case of *Western Canadian Shopping Centres Inc. v. Dutton*. The judgment, written by Chief Justice Beverley McLachlin, gives further impetus for legislative class actions reform. It states, in para. 33: "Clearly, it would be advantageous if there existed a legislative framework addressing these issues [that is, the issues left open by Alberta Rule 42 – the historic representative action rule]. The absence of comprehensive legislation means that courts are forced to rely heavily on individual case management to structure proceedings." The judgment goes on to

say in para. 34, that: "Absent comprehensive legislation, the courts must fill the void under their inherent power to settle the rules of practice and procedure as to disputes brought before them. ... However desirable comprehensive legislation on class action practice may be, if such legislation has not been enacted, the courts must determine the availability of the class action and the mechanics of class action practice." Chief Justice McLachlin emphasizes this point again in para. 51: "In the absence of comprehensive class-action legislation, courts must address procedural complexities on a case-by-case basis. Courts should approach these issues as they do the question of whether a class action should be allowed: in a flexible and liberal manner, seeking a balance between efficiency and fairness."

National class actions

Modern wrongs do not stop at provincial or even national jurisdictional borders. Class actions statutes in some Canadian jurisdictions allow persons resident outside the home jurisdiction to join the class action ("opt in"). In Ontario, the statute is silent about non-residents but the courts have recognized a jurisdiction to create "national classes." For the purposes of the Ontario law, persons living anywhere in Canada who fit within the class definition are included in the class and bound by the outcome of the proceedings unless they have expressly opted out. In practice, the Ontario courts treat persons resident in provinces that have enacted class actions legislation differently from persons resident in provinces that have not enacted class actions legislation. They do so by excluding from a "national class" persons resident in jurisdictions that have class actions legislation, at least where a class action has been commenced. The courts in other Canadian provinces or territories have not yet dealt with issues concerning the impact of resolution of the Ontario class action on non-resident class members who do not opt out.

Even where class actions legislation does exist, requiring persons in different jurisdictions to bring separate actions seeking relief with respect to the same conduct or event can be uneconomical and inefficient. With the enactment of class actions legislation in a growing number of jurisdictions, questions relating to the creation of "national classes" loom larger on the horizon. This is a matter that the Uniform Law Conference may wish to address sometime in the future. In the meantime, we have prepared materials on various inter-jurisdictional issues that

are likely to arise and that will need to be resolved. Our intention is to post these materials on our website.

E-Commerce

We have worked closely with the ULC on the development of Uniform Electronic Commerce legislation. The legislation is now being brought forward by the Department of Innovation and Science. At the same time, we have continued to work with the Department of Government Services in developing proposals for both regulatory and adjudicative frameworks in this area. The Director has presented to and attended a meeting of experts assembled by Industry Canada, and will continue to be involved in the Alberta review of proposals on internet contracts presented to the Consumer Measures Committee of the Agreement on Internal Trade.

Electronic Wills and Formalities

In our Final Report No. 84, *Wills: Non-Compliance With Formalities*, we recommend that Alberta courts be given power to admit to probate a will or an alteration, revocation or revival of a will which does not comply with the formalities prescribed by the *Wills Act*. This power is generally referred to as a "dispensing power". The power could be exercised only if a court is satisfied by clear and convincing evidence that the testator intended to adopt the document as a will, alteration, revocation, or revival. In extreme cases, a court could even admit to probate a document which, for inadvertence or other good reason, a testator fails to sign. The only formal requirement that could not be dispensed with in a proper case would be writing. Electronic records could not be admitted to probate.

In the report we recommended that the discretionary power not extend to the requirement of writing – that is, something not in writing could not be admitted to probate. However, the ULC asked us to consider whether the incidence of

E-wills was such that an amendment to the formal requirements should be considered.

At that time we undertook to review whether or not the formalities for wills should be changed to provide for the possibility of electronic wills. We have prepared such a paper and recommended that the formalities not be amended, but that it be made clear that the court discretion to admit non-complying wills could also apply to e-wills in the appropriate circumstances. That report was accepted and we will produce an addendum to our Final Report No. 84, indicating the subsequent treatment of e-wills.

Family Law (Review of Domestic Relations Act)

We issued a boxed set of four Reports for Discussion in October 1998: RFD 18.1, *Overview*; RFD 18.2, *Spousal Support*; RFD 18.3, *Child Support*; and RFD 18.4, *Child Guardianship, Custody and Access*. These reports continued the work we commenced on the *Domestic Relations Act*, Alberta's principal family law statute, when we issued Report No. 65 on *Family Relationships: Obsolete Actions* in March 1993. Taken together, the recommendations in these reports cover the policy areas necessary to enact a new family law statute for Alberta which would replace the substantive law provisions in the *Domestic Relations Act*, the *Parentage and Maintenance Act* and Part IV of the *Family Court Act*.

We called our boxed set "Reports for Discussion" because we had not consulted publicly on our recommendations. However, we wrote the reports with the intention that they could read as final reports and could readily be converted for the purpose.

Since issuing our reports, developments have taken place in the jurisprudence on the constitutional requirements relating to couples living in marriage-like cohabitational relationships (both opposite and same sex). The Alberta government has announced that it expects to issue working papers later this year in order to consult Albertans on family law issues. We understand that

these working papers make generous use of our reports. We expect that they will also address the issues raised in the case law that has been decided since we issued our reports. We continue to stand by, ready to become further involved if and when asked.

Fatal Accidents Act

In Report No. 66 we recommended a new Section 8, *Fatal Accidents Act* dealing with non-pecuniary loss. The proposals were accepted and we subsequently carried out a 5-year review of the levels of the statutory award. Recent jurisprudence has questioned whether the distinctions made in the section are contrary to the equality provisions of Section 15 of the Charter. While we are of the view that the case misconstrued the policy issues underlying the amendments to Section 8 and, in particular, misconstrued the purpose and relevance of the empirical evidence we adduced, it does provide an opportunity to review the underlying policy one more time. Reaffirming the policy of recognizing the pain, without the necessity of demonstrating the grief, becomes more difficult given this decision.

Future Income Plans

Alberta law now permits a judgment creditor to enforce a money judgment against most registered retirement savings plans (RRSPs), deferred profit-sharing plans (DPSPs), and registered retirement income funds (RRIFs). However, creditors usually cannot enforce their judgments against pensions, or against annuities and RRSPs issued by insurance companies. There is an apparent unfairness in this exposure of non-insurance RRSPs, compared to the virtually complete protection of most insurance RRSPs and annuities, and most pensions. When pensions, insurance annuities, RRSPs, and RRIFs start to make payments to the depositor, the creditor's appropriate remedy is to attach the payments. There is again an inconsistency in the treatment of non-insurance RRSPs and RRIFs, compared to most pensions, and RRSPs and RRIFs sold by insurers. The Institute is in the

process of deciding whether to undertake a project on this anomalous treatment of future income security plans in the law of civil enforcement.

Insurance Contract Conditions

Under the former *Limitations of Actions Act* parties could agree to shorten the statutory limitation periods by contracting out of the Act. Under the new *Limitations Act*, it is likely that parties can no longer agree to shorten a limitation period; they may only agree to extend a limitation period. The *Limitations Act* expressly preserves limitation periods found in other statutes which are shorter than those in the *Limitations Act*.

Originally this project focussed on how this change affects the validity of limitation periods found in insurance contracts for actions against insurers. There are statutory conditions in the *Insurance Act* which provide that an insured has one year within which to commence an action against the insurer if the insurer refuses the claim, and there are also contractual one year limitation periods found in other types of insurance contracts.

While examining this issue, it became apparent that the area of limitation periods in insurance is very confusing. The limitation periods for bringing actions against insurers differ depending on the type of insurance. These different limitation periods have resulted in much litigation, as many insureds have unknowingly failed to comply with the disparate limitation periods.

The Institute is considering whether all limitation periods for actions against insurers should be standardized. If so, there is a question as to whether the limitation period should be that provided by the *Limitations Act*, or whether it should be some other shorter period.

A Discussion Memorandum is nearly complete and should be circulated to interested parties in the Fall of 2001.

Marshalling Rules

The value of assets in most estates exceeds the testator's debts and the funeral and testamentary expenses and, therefore, the personal representative has sufficient means to pay these obligations in full. There will, however, be cases in which the size of the estate, while sufficient to pay these obligations, is not sufficient to pay these obligations as well as the gifts made in the will. Over the course of hundreds of years, the English courts developed an order in which assets of an estate can be resorted to for payment of debts and funeral and testamentary expenses. This order does not affect creditors, *per se*, who can attach any asset they want. It does not dictate the assets the personal representative can use to pay these obligations. But this order does determine how beneficiaries are ultimately affected by payment of these obligations.

This archaic area of the law is badly in need of revision for the following reasons. First, the historical reasons for the development of the rules are no longer relevant, with the result that the distinctions made in the rules are no longer justifiable. For example, how does one justify the fact that if the testator devises realty on trust for payment of debts, the debts must still be paid first from the personal property that passes by way of residue? Second, determining what the rules are involves reading case law developed over a 225-year period. This alone speaks of the need for a clear and simplified statutory order. Third, as one would expect, a body of case law developed over this length of time is full of contradictory decisions. In this area, the more one reads, the more confused one becomes. Fourth, the law is uncertain. What falls into class 4? What exactly is the effect of a direction to pay debts?

For the purpose of marshalling, we recommend that the order in which assets are applied in payment of unsecured debts and liabilities should be as follows:

- (a) property specifically charged with the payment of debts or left on trust for the payment of debts;
- (b) property passing by way of intestacy and property passing by way of residue;

- (c) general gifts of property;
- (d) specific gifts of property;
- (e) property over which the deceased had a general power of appointment that has been expressly exercised by will.

Each class will include both personal property and real property, and no distinction should be made between the two types of property within a given class. Each asset within a given class would contribute rateably to payment of debts. To charge property with payment of debts or create a trust for payment of debts, a testator must do something more than give a general direction that debts be paid or impose a trust that the testator's debts be paid. This proposed statutory order could be varied by an expression of contrary intention by the testator.

We also raise two other issues for discussion, namely:

1. Non-consensual security interests – Should property that is subject to a non-consensual security interest be primarily responsible for payment of the obligation secured by the non-consensual security interest?
2. Should an asset that triggers income tax by reason of the death of the testator be primarily responsible for payment of the income tax arising from that asset?

Matrimonial Property Act Review

The *Matrimonial Property Act*, which governs the distribution of property in a divorce, has been in existence for approximately 25 years. The Institute is considering whether it is necessary to make substantial revisions to any or all of the Act. As such, we are currently seeking input from the family bar and the court for suggestions as to issues which the *Matrimonial Property Act* does not address sufficiently.

Some issues which have been raised are:

- i) Whether the definition of "spouse" should include common law and/or same sex couples;
- ii) The need for a process for selling the matrimonial home under the Act;
- iii) The need for a process for adding companies as parties or dealing with corporate assets;
- iv) A lack of criteria for valuing property at a time other than date of trial;
- v) Reviewing the use and effectiveness of penalties for disposing of household goods;
- vi) Reviewing the principles governing exemptions and presumption of joint ownership of property; and
- vi) Dealing with matrimonial debt.

These are preliminary issues which have been voiced through consultation with members of the family bar as well as the judiciary, and further consultation is still ongoing. No determination has yet been made as to the scope of this project, as some of the issues listed above may need to be dealt with as separate projects. It is anticipated that a project management plan will be developed in fall of 2001, once the scope of the project is determined.

Non-Resident Dependent Adult Trustees

To be appointed under the *Dependent Adults Act* as a trustee of the estate of a dependent adult, an individual must be a resident of Alberta. This prevents a dependent adult's finances being managed by any friend or family member who lives outside the province. If no resident individual or trust corporation can be found to act as a dependent adult's trustee, the Public Trustee of Alberta will fulfill that role as a last resort. Alberta is one of very few jurisdictions in Canada to have such an absolute prohibition in this area.

In this project, the Institute is examining whether the Alberta prohibition concerning non-resident trustees should be changed. Background research has been prepared and input has been sought from selected practitioners and the Office of the Public Trustee.

Prudent Investor: Not-for-Profits

We are considering whether or not to adopt a project on the investment standards that apply to not-for-profit bodies having charitable or other public purposes.

The issue was brought to our attention as a by-product of the recommendations we made in Final Report No. 80 on *Trustee Investment Powers* in February 2000. In our report, we recommended that Alberta adopt the "prudent investor" approach to the scope of a trustee's investment powers where the trust instrument does not define them. This approach would replace the "legal list" approach which has become outmoded. The purpose of restricting the investment powers of trustees is to prevent them from exposing the trust capital to undue risk.

Certain corporate bodies are likely to receive donations of funds to assist them in carrying out their objectives. Included among them are bodies incorporated as societies or not-for-profit companies. In some cases, the person making the donation will stipulate the use to be made of the funds in a way that establishes a trust. Where the donor gives specific directions, those directions will govern the trustee investment powers. Where the donor is silent, the donated funds would be subject to the trustee investment powers considered in Report No. 80.

In other cases, the donor may simply write a cheque to the organization without giving directions for the use of the funds. If adopted, a project on this topic would require us to consider what investment standards should be met in cases of this sort. The issues straddle the boundary between trust law and corporate law.

Examples of questions that would need to be considered include:

- (1) Should a statutory investment standard be imposed on non-for-profit bodies?
- (2) If yes, to what bodies should the investment standard adopted apply:
 - (a) all or only some societies and not-for-profit companies?

- (b) other not-for-profit bodies, e.g. churches, universities, foundations, co-ops, United Way, credit unions, unincorporated recipients of donations?
 - (b) only to entities having charitable purposes?
 - (c) also to those having non-charitable but public purposes?
- (3) Should the same standard apply to all funds managed by the not-for-profit body or should distinctions be made for funds having different sources (e.g. privately donated funds, public grants, or funds raised from membership fees, the sale of goods or provision of services)?
 - (4) If the "prudent investor" standard is imposed, what degree of responsibility to meet that standard should the corporate directors bear with respect to property in their control? Should they be subject to the usual duties of corporate directors to "act honestly and in good faith with a view to the best interests of the corporation" and to "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances" [*Business Corporations Act*, S.A. 1981, c. B-15, s. 117(1)]? Or, should they be regarded as trustees in their capacity as individuals?
 - (5) To what extent should officers of the corporation bear personal responsibility to comply with the statutory investment standard?
 - (6) To what extent should the donor's intentions affect the imposition of a statutory investment standard?
 - (7) Would the imposition of a statutory investment standard give rise to a duty to invest?
 - (8) What sanctions should be imposed for failure to meet the standard? Should they target the corporation or the directors and officers individually? If the corporation, should all of the assets of the corporation be exigible to enforce the sanction? (Even assets held on

express trust were held to be exigible when the Christian Brothers of Ireland in Canada was wound up in order to meet the claims for compensation of abuse victims at the Mount Cashel Orphanage in Newfoundland [*Re Christian Brothers of Ireland in Canada*, Ont. C.A., Docket C29290 (April 10, 2000), available at <http://www.ontariocourts.on.ca/decisions/2000/April/christian.htm>]].

Relationships - Charter Update

Over the past few years there have been several challenges to the constitutionality of various pieces of legislation alleging discrimination on the basis of sexual preference. The Supreme Court of Canada has made it clear that sexual preference is an analogous ground under the *Charter* and that legislation which discriminates on this ground is unconstitutional. However, the challenges to date have been on a "piecemeal" basis, limited to one statute or even one provision of a statute at a time. This has led to incremental change which has proceeded at different rates in provinces across Canada. Some provinces have adopted, or are in the process of adopting, omnibus legislation which purports to bring all the relevant provincial legislation in conformity with the *Charter* with regard to the issue of same sex couples. Currently, Alberta has not proposed any such omnibus legislation. Rather, it has chosen to deal with the issue on a case by case basis, and has only made amendments to each specific piece of legislation which has been declared unconstitutional by the court. This piecemeal response is slow, costly, and time consuming.

The Institute is looking at the approaches which other jurisdictions have taken or proposed to address this issue, such as omnibus legislation and establishing some form of domestic partnership registry. We have commenced research in these areas, focussing on the jurisprudence to date as well as evaluating the steps which either have been taken, or are currently proposed in other jurisdictions.

Rules of Court

The Institute was approached early in 2000 by the Rules of Court Committee with the prospect of participating in a revision of the Rules of Court. The Institute was concerned that before embarking on such a large undertaking, the necessary financing and management be in place to support such a lengthy project.

During the fall of 2000, the Institute developed a comprehensive outline for the project, detailing the methodology and the resources required to complete the project. What was then needed was the commitment to underwrite a \$2.5 million, three year project. The first to commit its support was the Law Society with some cash and resources in kind. The lion's share of the finance was to be split between the Institute, allocating \$1.2 million of its budget over three years, and the Law Foundation and the Department of Justice. In November 2000, the Alberta Law Foundation confirmed its contribution of \$850,000 and in February 2001, the Department committed its contribution of \$500,000.

Work commenced in May of this year with the secondment of Professor June Ross of the Faculty, effective July 1, and the dedication of some time of Institute Counsel and summer research students. A significant amount of preparatory work has been done with a view to decisions by the Institute Board and the Steering Committee on the definition and methodology for the project. We anticipate rolling out the project to the profession at eight centres across the province in October and November, indicating how the profession can be involved, and when and how the project would like to receive input from the profession.

Succession Code

Currently the law of succession in Alberta is scattered among many different statutes. Much of this law is in need of review and modernization. The goals of the Succession Code project are:

(1) to consolidate all the existing statutes and provisions relating exclusively to the law of succession so that they may be more easily found and accessed;

(2) to incorporate into the consolidation all the recommendations for reform of succession law previously made by Institute reports (for example, recommendations concerning survivorship, beneficiary designations, intestacy, non-compliance with wills formalities, effect of divorce on wills and division of matrimonial property on death);

(3) to recommend reform of other major issues in the law of succession. It is anticipated that three Reports for Discussion will be issued to address the areas of wills, administration of estates and other succession issues (including family relief).

A Project Advisory Committee has been established and preliminary legal research has begun. The first area to be addressed is the law of wills.

Uniform Enforcement of Judgments Act & Court Jurisdiction and Proceedings Transfer Act

This legislation is one part of a three-part strategy dealing with the recognition and enforcement of Canadian judgments, the recognition and enforcement of foreign judgments, and the rationalization of the basis upon which our court assumes jurisdiction to hear a case in the first place. All of this work has been carried on through the Uniform Law Conference of Canada, and the Institute Director has been an integral part of each of the working groups in the three areas. In addition, the Director proposed and wrote the parameters for the projects when they were first adopted by the Uniform Law Conference. As of August 2001, the working group has now completed the last of the three parts, namely the draft legislation on recognition of foreign judgments. Now that all of the three components of the uniform legislation are in place, it will be recommended that Alberta adopt all three elements. There will be a need for a brief report setting out

the details of how the uniform legislation can be enacted in the Alberta context. This will have repercussions for some of the Rules of Court, particularly those dealing with the mechanics of service, and the need for retention of the reciprocal enforcement of foreign judgments legislation.



FINAL REPORT

- 1* Compensation for Victims of Crime (1968)
- 2* Powers of Personal Representatives to Grant Options (June 1969)
- 3* Occupiers' Liability (December 1969)
- 4* Age of Majority (January 1970)
- 5* Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)
- 6* Rule Against Perpetuities (August 1971)
- 7* Joinder of Divorce Proceedings with other Causes of Action (August 1971)
- 8* Assignment of Wages (October 1971)
- 9* Rule in *Saunders v. Vautier* (February 1972)
- 10* Powers of Maintenance and Advancement (June 1972)

ENACTMENT

- Criminal Injuries Compensation Act, R.S.A. 1970, c. 75 (now R.S.A. 1980, c. C-33, am. by S.A. 1982, c. 14).
- Wills Act, R.S.A. 1970, c. 393, s. 30 (now R.S.A. 1980, c. W-11, s. 30).
Devolution of Real Property Act, R.S.A. 1970, c. 109, s. 13 (now R.S.A. 1980, c. D-34, s. 12).
- Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 1980, c. O-3).
- Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 1980, c. A-4).
- Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 1980, c. G-12) accepted. Recommendations for incidental amendments not acted upon.
- Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 1980, c. P-4).
- Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
- Wage Assignments Act, S.A. 1972, c. 61 (now R.S.A. 1980, c. W-1).
- S.A. 1973, c. 13, s. 12 amending the Trustee Act, R.S.A. 1970, c. 373, s. 37 (now R.S.A. 1980, c. T-10, s. 42).
- S.A. 1974, c. 65, s. 9 amending the Trustee Act, R.S.A. 1970, c. 373, ss. 31-33 (now R.S.A. 1980, c. T-10, ss. 32, 34, 35, 36(3), 37).

FINAL REPORT

ENACTMENT

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| 11* Common Promisor and Promisee: Conveyances with a Common Party (October 1972) | Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 amended 1975, c. 5 (2 sess.) (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 10-13; Land Titles Act, R.S.A. 1980, c. L-5, ss. 71, 72, 119). |
| 12* Expropriation (March 1973) | Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 1980, c. E-16). |
| 13* Judicature Act, Section 24 (August 1974) | S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193. |
| 14 Minors' Contracts (January 1975) | |
| 15* Validity of Rules of Court (December 1974) | S.A. 1976, c. 58, s. 6(4) amending the Judicature Act, R.S.A. 1970, c. 193, s. 39 (now R.S.A. 1980, c. J-1, s. 47). |
| 16* Rule in <i>Hollington v. Hewthorn</i> (February 1975) | S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act, R.S.A. 1970, c. 127, s. 27 (now R.S.A. 1980, c. A-21, s. 27). |
| 17* Small Projects (June 1975) | S.A. 1976, c. 55, s. 2 amending the Workers' Compensation Act, S.A. 1973, c. 87, s. 15 (now R.S.A. 1980, c. W-15, s. 15); S.A. 1976, c. 58, s. 3 amending the Bulk Sales Act, R.S.A. 1970, c. 37 (now R.S.A. 1980, c. B-13, ss. 1(f), (j), 4(2), 6(b), 7, 14). |
| 18* Matrimonial Property (August 1975) | Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 1980, c. M-9), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home. |
| 19* Consent of Minors to Health Care (December 1975) | |
| 20* Status of Children (June 1976) | Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11. |

FINAL REPORT

ENACTMENT

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| 21* | Purchase by a Company of Shares Which It Has Issued (January 1977) | S.A. 1977, c. 13, s. 2 amending the Companies Act, R.S.A. 1970, c. 60, s. 41 (reenacted as R.S.A. 1980, c. C-20, ss. 42-49, 51-54, then superseded by S.A. 1981, c. B-15, ss. 32 and 33: see Report 36). |
| 22* | Residential Tenancies (February 1977) | Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now R.S.A. 1980, c. L-6), based in large part on our recommendations. |
| 23* | Partition and Sale (March 1977) | Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 14-19, 20-34). |
| 24 | Survival of Actions and Fatal Accidents Act Amendment (April 1977) | Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 1980, c. S-30; Fatal Accidents Act R.S.A. 1980, c. F-5, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 1980, c. L-5, s. 53). |
| 25 | Family Law Administration: the Unified Family Court (April 1978) | |
| 26 | Family Law Administration: Court Services (April 1978) | Some recommendations carried out by administrative action. |

FINAL REPORT

- 27 Matrimonial Support
(March 1978)
- 28 Tenancies of Mobile Home Sites
(April 1978)
- 29 Family Relief (June 1978)
- 30* The Builders' Lien Act: Certain
Specific Problems (March 1979)
- 31 Contributory Negligence and
Concurrent Wrongoers
(April 1979)
- 32 Guest Passenger Legislation (April
1979)
- 33 Inter-Spousal Tort Immunity (April
1979)

ENACTMENT

S.A. 1977, c. 64 amending Part 4 of the Domestic Relations Act, R.S.A. 1970, c. 113 (now covered by the Maintenance Enforcement Act, S.A. 1985, c. M-0.5, establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); S.A. 1977, c. 92 amending the Social Development Act, R.S.A. 1970, c. 345 (now R.S.A. 1980, c. S-16, ss. 14, 15); S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act, R.S.A. 1970, c. 86 (now R.S.A. 1980, c. D-5, ss. 3(2), 3(3), 4(e)-(f), (6). (Our proposals for change in the substantive law have not yet been implemented.)

Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5.

S.A. 1985, c. 14 amending the Builders' Lien Act, R.S.A. 1980, c. B-12.

Proclamation 5 July 1979 of previously enacted S.A. 1977, c. 76, s. 6 to come into force 1 September 1979 (now Insurance Act, R.S.A. 1980, c. I-5, s. 310) (This is not the principal recommendation of the Report.)
Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act (S.A. 1990, c. 22, s. 1).

Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act (S.A. 1990, c. 22, ss. 2 and 3).

FINAL REPORT

ENACTMENT

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| 34* | Service of Documents During Postal Interruptions (June 1979) | S.A. 1980, c. 88 (now Judicature Act, R.S.A. 1980, c. J-1, ss. 33-37). |
| 35* | Defamation: Fair Comment and Letters to the Editor (October 1979) | S.A. 1980, c. 11 amending the Defamation Act, R.S.A. 1970, c. 87 (now R.S.A. 1980, c. D-6, s. 9). |
| 36* | Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols. | Business Corporations Act, S.A. 1981, c. B-15. |
| 37A | The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982) | |
| 37B | Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982) | |
| 38 | The Uniform Sale of Goods Act (October 1982) | |
| 39 | Defences to Provincial Charges (March 1984) | |
| 40 | Judicial Review of Administrative Action: Application for Judicial Review (March 1984) | Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17. |
| 41 | Compensation for Security Interests in Expropriated Land (May 1984) | |
| 42 | Debt Collection Practices (June 1984) | See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5. |
| 43 | Protection of Children's Interests in Custody Disputes (October 1984) | |
| 44 | Statute of Frauds (June 1985) | |
| 45* | Status of Children: Revised Report, 1985 (November 1985) | Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11. |

FINAL REPORT

- 46* Trade Secrets (July 1986)
- 47 Survivorship
(August 1986)
- 48 Matrimonial Property: Division of
Pension Benefits Upon Marriage
Breakdown (June 1986)
- 49 Proposals for a New Alberta
Incorporated Associations Act
(March 1987)
- 50 Prejudgment Remedies for
Unsecured Claimants
(February 1988)
- 51 Proposals for a New Alberta
Arbitration Act (October 1988)
- 52 Competence and Human
Reproduction (February 1989)
- 53 Towards Reform of the Law
Relating to Cohabitation Outside
Marriage (June 1989)
- 54 Financial Assistance by a
Corporation: Section 42, The
Business Corporations Act (Alberta)
(August 1989)
- 55 Limitations
(December 1989)
- 56 The Bulk Sales Act
(January 1990)
- 57 Section 16 of the Matrimonial
Property Act (March 1990)
- 58 Division of Canada Pension Plan
Credits in Alberta
(November 1990)

ENACTMENT

Draft statute adopted by Uniform Law
Conference of Canada, Victoria, B.C.,
August 1987.

Bill 54 (Volunteer Incorporations Act)
introduced into Alberta Legislature,
June 15, 1987.

Civil Enforcement Act, S.A. 1994,
c. C-10.5.

Arbitration Act, S.A. 1991, c. A-43.1.

Business Corporations Act, S.A. 2000,
c. 10, s. 2, effective December 1, 2000.

Limitations Act, S.A. 1996, c. L-15.1.
In Force March 1, 1999

Miscellaneous Statutes Amendment Act,
1992, S.A. 1992, c. 21, s. 5.

Miscellaneous Statutes Amendment Act,
1991, S.A. 1991, c. 21, s. 24.

FINAL REPORT

- 59 Enduring Powers of Attorney
(December 1990)
- 60 Status of Children: Revised Report,
1991
(March 1991)
- 61 Enforcement of Money Judgments,
2 Vols., (March 1991)
- 62 Proposals for the Reform of the
Public Inquiries Act
(November 1992)
- 63 Section 195 of the Land Titles Act
(February 1993)
- 64 Advance Directives and Substitute
Decision—Making in Personal
Health Care
(March 1993)
*(A Joint Report of the Alberta Law
Reform Institute and the Health Law
Institute)*
- 65 The Domestic Relations Act (DRA)
— Phase 1. Family Relationships:
Obsolete Actions (March 1993)
- 66 Non-Pecuniary Damages in
Wrongful Death Actions—A
Review of Section 8 of the Fatal
Accidents Act (May 1993)
- 67 Transfers of Investment Securities
(June 1993)
- 68 Beneficiary Designations: RRSPs,
RRIFs and Section 47 of the Trustee
Act (September 1993)
- 69 Proposals for a Land Recording and
Registration Act for Alberta, 2
Vols., (October 1993)
- 70 Mortgage Remedies in Alberta
(June 1994)

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- Powers of Attorney Act, S.A. 1991
c. P-13.5.
- Family and Domestic Relations Statutes
Amendment Act, 1991, S.A. 1991, c. 11.
- Civil Enforcement Act, S.A. 1994,
c. C-10.5.
- Miscellaneous Statutes Amendment Act,
1994, S.A. 1994, c.23, s.26.
- Personal Directives Act, S.A. 1996, c. P-
4.03.
Proclamation December 1, 1997
O/C #5319
- Fatal Accidents Amendment Act, 1994,
S.A. 1994, c.16.
- Miscellaneous Statutes Act, 1994, S.A.
1994, s. 46.
- Principles adopted in the Metis
Settlements Land Registry Regulation
(AR 361/91)

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- | | | |
|----|---|--|
| 71 | The Presumption of Crown Immunity (July 1994) | |
| 72 | Effect of Divorce on Wills (November 1994) | |
| 73 | Revision of the Surrogate Rules (Final Report) (May 1996) | The Rules and Forms were enacted by OC 32/95 on June 19, 1995. The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. |
| 74 | Protection Against Domestic Abuse (February 1997) | Protection Against Family Violence Act, S.A. 1998, c. P-19.2, effective June 1, 1999. |
| 75 | "Last Clear Chance" Rule (August 1997) | Contributory Negligence Act, R.S.A. 1980, c. C-23, as am. by the Justice Statutes Amendment Act, 2000, S.A. 2000, c. 20, s. 72. |
| 76 | Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998) | |
| 77 | Limited Liability Partnerships (April 1999) | Partnership Amendment Act, S.A. 1999, c. 27. |
| 78 | Reform of the Intestate Succession Act (June 1999) | |
| 79 | Powers and Procedures for Administrative Tribunals in Alberta (December 1999) | |
| 80 | Trustee Investment Powers (February 2000) | |
| 81 | Occupiers' Liability: Recreational Use of Land (February 2000) | |

FINAL REPORT

- 82 Cost of Credit Disclosure
(February 2000)
- 83 Division of Matrimonial Property
on Death (May 2000)
- 84 Wills: Non-Compliance with
Formalities (June 2000)
- 85 Class Actions
(December 2000)

ENACTMENT

Fair Trading Act, S.A. 1998, c. F-1.05,
Part 9, s. 66 as am. by the Insurance Act,
S.A. 1999, c. I-5.1, s. 855 Proc.; s. 69 as
am. by the Miscellaneous Statutes
Amendment Act, 1999, S.A. 1999, c. 26,
s. 8.

REPORTS FOR DISCUSSION**NOTE**

- 1* Protection of Trade Secrets
(February 1984)
- 2 Matrimonial Property: Division of
Pension Benefits upon Marriage
Breakdown (May 1985)
- 3 Remedies of Unsecured Creditors
(May 1986)
- 4 Limitations
(September 1986)
- 5 Financial Assistance by a
Corporation: Section 42, The
Business Corporations Act (Alberta)
(August 1987)
- 6 Sterilization Decisions: Minors and
Mentally Incompetent Adults
(March 1988)
- 7 Enduring Powers of Attorney
(February 1990)
- 8 Towards a New Alberta Land Titles
Act (August 1990)
- 9 Mortgage Remedies in Alberta
(April 1991)
- 10 Revision of the Surrogate Rules
(October 1991)
- 11* Advance Directives and Substitute
Decision—Making in Personal
Health Care
(November 1991)
- 12 Non-Pecuniary Damages in
Wrongful Death Actions — A
Review of Section 8 of the Fatal
Accidents Act (June 1992)
- 13 Report on Liens
(September 1992)

REPORTS FOR DISCUSSION**NOTE**

- 14 The Matrimonial Home
(March 1995)
- 15* Domestic Abuse: Toward an
Effective Legal Response
(June 1995)
- 16 Reform of the Intestate Succession
Act (January 1996)
- 17 Division of Matrimonial Property
on Death (March 1998)
- 18 Family Law (October 1998)
 - 18.1 Overview
 - 18.2 Spousal Support
 - 18.3 Child Support
 - 18.4 Child Guardianship, Custody
and Access

ISSUES PAPERS

NOTE

- 1 Towards a New Arbitration Act for Alberta (July 1987)
- 2 Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)
- 3 Public Inquiries (November 1991)
- 4 Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)

DISCUSSION PAPERS

NOTE

- 1 Civil Litigation: The Judicial Mini-Trial (August 1993)

RESEARCH PAPERS

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- 1* Rent Control; Security of Tenures
(November 1975)
- 2* Entry of Landlord; Locks and
Security Devices (November 1975)
- 3* Obligation to Repair; Security
Deposits (November 1975)
- 4* Termination Procedures; Failure of
Tenants to Pay Rent; Overholding
Tenants
(November 1975)
- 6* Resolution of Disputes; Landlord
and Tenant (Advisory) Boards;
Distress (November 1975)
- 7* Contract or Property Law; Form and
Delivery of Lease; Right to Assign
or Sublet (November 1975)
- 8* Mobile Homes
(November 1975)
- 9* Consent of Minors to Medical
Treatment (May 1975)
- 10 Illegitimacy
(June 1974)
- 11* Administration of Family Law: The
Unified Family Court:
Constitutional Opinions
(May 1978)
- 12* Statute of Frauds
(March 1979)
- 13 Matrimonial Support Failures:
Reasons, Profiles and Perceptions of
Individuals Involved (Canadian
Institute for Research in the
Behavioural and Social Sciences:
March 1981)

RESEARCH PAPERS

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- 14 Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)
- 15 Survey of Adult Living Arrangements: A Technical Report (November 1984)
- 16 The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)
- 17* Corporate Directors' Liability (February 1989)
- 18 Report on Referees (February 1990)
- 19 Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)
- 20 Court-Connected Family Mediation Programs in Canada (May 1994)

The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.

CONSULTATION MEMORANDA

- 1 Division Of Pension Benefits Upon
Marriage Breakdown
(September 1996)
- 2 Reasonable Accommodation In The
Workplace (November 1995)
- 3 Business Names Legislation
(December 1996)
- 4 Should a Claim for Loss of Chance
of Future Earnings Survive Death?
(August 1997)
- 5 Should a Claim for Punitive
Damages Survive Death?
(December 1998)
- 6 Powers and Procedures for
Administrative Agencies: Model
Code (April 1999)
- 7 Trustee Investment Powers
(September 1999)
- 8 Wills: Non-Compliance with
Formalities (December 1999)
- 9 Class Actions
(March 2000)

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon) (March 1993)

The Self-Regulation of the Legal Profession in Canada and in England and Wales by W.H. Hurlburt. Co-published by: The Law Society of Alberta and the Alberta Law Reform Institute. (January 2000)